

REMARKS

Applicant thanks the Examiner for the careful review of this application. Claims 1-23 are currently pending. Claims 1-8 and 13 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 7,013,286 to Aggarwal et al. in view of U.S. Patent No. 5,717,866 to Naftzger. Claims 9-12 and 16 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Aggarwal and Naftzger in further view of KR Publication No. KR2001/097,065 to Jun et al. Claims 13-15 and 17-20 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Aggarwal and Naftzger in further view of PCT Publication No. 00/39657 to Greenberg et al. Claims 21-23 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Aggarwal, Naftzger, Jun and Greenberg.

Applicant respectfully requests reconsideration of the present application. Applicant has amended claims 1, 13, 14, 15, 17 and 20 as set forth above. For example, claim 1 has been amended to state that "the message code was embodied as a graphical representation in an image presented on a display device, and wherein at least a portion of the image including the graphical representation was captured by the remote device." Similarly, claim 13 has been amended to include capturing a graphical representation of a message code on a display device, transmitting a message code to a remote device to receive a coupon message, and providing the coupon message to a point of sale terminal. Claim 17 has been amended in a manner similar to claim 1.

As amended, the cited references fail to establish a *prima facie* case of obviousness.

The M.P.E.P. sets forth the strict legal standard for establishing a *prima facie* case of obviousness based on modification or combination of prior art references. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references where combined) must teach or suggest all the claim limitations." M.P.E.P. § 2142, 2143. The teaching,

suggestion, or motivation for the modification or combination and the reasonable expectation of success must both be found in the prior art and cannot be based on an applicant's disclosure. *See Id.* (citations omitted). "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art" at the time of the invention. M.P.E.P. § 2143.01. Even the fact that references can be modified or combined does not render the resultant modification or combination obvious unless the prior art teaches or suggests the desirability of the modification or combination. *See Id.* (citations omitted).

Here, the cited references fail to disclose message codes embodied as graphical representations, or the capture of those graphical representations by a remote device when displayed on a display device, in the combinations set forth in independent claims 1, 13 and 17. Accordingly, the cited prior art fails to establish a *prima facie* case of obviousness.

CONCLUSION

Applicant believes that all pending claims are allowable and a Notice of Allowance is respectfully requested.

If the Examiner believes that a conference would be of value in expediting the prosecution of this application, he is cordially invited to telephone the undersigned counsel at the number set out below.

Respectfully submitted,
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